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November 12, 2021

VIA ELECTRONIC FILING

The Honorable Jocelyn Boyd
Chief Clerk / Executive Director
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

Re: Joint Petition of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC to Request the Commission to Hold a Joint Hearing with the North Carolina Utilities Commission to Develop Carbon Plan
Docket No. 2021-349-E

Dear Ms. Boyd:

I am writing to respond on behalf of Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (collectively “the Companies”) to the objection filed by counsel for Google, Inc. to our request for an ex parte briefing in Docket No. 2021-349-E. The Google objection does not assert that the briefing request violates the requirements of S.C. Code Ann. §58-3-260. Instead, the grounds stated for the objection are: 1) the “magnitude” of the issues presented in the docket; 2) the unusually rapid procedural schedule proposed by DEC and DEP; and 3) the fact that work in the docket will be ongoing at the same time as the briefing. These grounds are not reasons to refuse the briefing but, to the contrary, are reasons why the Commission should deny Google’s objection.

The Companies recognize that the request they have submitted in this docket for a joint proceeding with the North Carolinas Utility Commission (“NCUC”) raises new issues and that the Companies have requested expedited action by this Commission. Those are some of the reasons why the Companies have requested an opportunity to appear before the Commission on November 19th for an allowable ex parte briefing.¹ We believe that an early briefing is especially appropriate in this situation so that representatives of the Companies can appear before the Commission to explain and answer questions about the matters set out in the petition. In addition, because of the transparency of the Commission’s procedures for holding ex parte briefings, the presentation by the Companies and the responses to Commissioner questions will provide an excellent opportunity for all interested stakeholders to be informed about the Companies’ request.

¹ The Companies originally requested that the briefing be held on November 17, 2021 but submitted a revised request for 11:00 am on November 19th.



The Google letter suggests that there is something inappropriate about a briefing that takes place to discuss issues in a pending docket. That suggestion is completely at odds with the provisions of S.C. Code Ann. §58-3-260(C)(6)(vi) which includes requirements that allowable briefings be held “at least twenty days prior to the hearing in the proceeding...” and subsection (C)(6)(vii) which allows responsive ex parte briefings to be held at least ten days before the hearing. In adopting the allowable ex parte briefing process as part of Act 175 of 2004, the General Assembly clearly contemplated that these briefings would be allowed to discuss matters pending before the Commission and included safeguards to ensure that other parties have a chance to respond.² The request by the Companies fully complies with the statutory requirements and Google’s suggestion otherwise is misplaced.

The Google objection is also inconsistent with the notice provisions of S.C. Code Ann. §58-3-260(C)(6) and this Commission’s longstanding practices regarding allowable ex parte briefings. The notice requirement for a briefing under that provision is five business days. Five days is not enough time for the Commission to adjudicate objections like the one that Google has interposed. It is a reasonable interpretation of the statutory provision that the General Assembly intended for the Commission to routinely allow briefings and counter-briefings. It has been the consistent practice of the Commission to allow all requests for briefings that are made in compliance with the statutory requirements. While Google’s letter is correct that the Commission is under no obligation to allow the Companies’ request, the Commission’s even-handed approach of allowing all requests has promoted transparency and confidence in the fairness of the Commission’s approach to its responsibilities. Moving away from that approach would likely seriously erode the value of the ex parte briefing process.

Thank you for your consideration of our views on Google’s objection to our request.

Yours truly,

Frank R. Ellerbe, III

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c (via email): Parties of Record
Camal O. Robinson, Deputy General Counsel

² A recent example of an ex parte briefing during a contested proceeding occurred on February 20, 2019 in Docket No. 2018-319-E. The docket was DEC’s most recent rate case and the entity giving the briefing to the Commission was the AARP, which presented Dr. John Ruoff to provide information opposing the Basic Facilities Charge proposed by DEC in its rate case. The briefing occurred approximately 30 days before the beginning of the contested case hearing in the proceeding. See attachment A (Transcript of February 20, 2019 AARP briefing).